

REMARKS

Claims 1-16 are pending in the application, as amended. Claim 1 has been amended to clarify that the stirring stick of the present invention is used in combination with a blender. Furthermore, claim 1 has been amended to clarify that the blender includes a base, a blender jar, and a blade set extending into the blender jar proximate a bottom end of the jar. Support for these amendments is found at least in original claim 9 and in Figs. 1 and 2 of the drawings. Claim 9 has been amended to similarly clarify that the blade set extends into the blender jar proximate the bottom end of the jar. Support for this amendment is also found at least in Figs. 1 and 2 of the drawings. Furthermore, claims 1 and 9 have been amended to recite that a cavity formed in a plunger forms an opening extending in a direction parallel to a longitudinal axis of the plunger and the opening and the cavity form a continuous flow channel from the first end to the second end. Support for these amendments is found at least in the drawings and is best illustrated in Figs. 3 and 4.

Still further, the specification has been amended to add a new paragraph describing an opening in the stirring stick handle. Support for the amendment of the specification is found at least in original claims 4 and 12. Figs. 3, 4, and 6 have been amended to all of the features recited in the claims. Support for amendment of the drawings is also found at least in original claims 4 and 12. No new matter has been added by the foregoing amendments.

Objection to the Drawings

The Examiner objected to the drawings under 37 C.F.R. § 1.83(a) for failure to show every feature of the invention specified in the claims. Specifically, the Examiner states that the element of claims 4 and 12 reciting that the “handle has an opening which is in fluid communication with the cavity, such that foodstuff may enter the cavity through the opening” is not shown in the drawings. Applicants have revised Figs. 3, 4, and 6 to illustrate the opening recited in claims 4 and 12. Support for amendment of the drawings is found at least in original claims 4 and 12. With the amendment of Figs. 3, 4, and 6, Applicant respectfully submits that the drawings are in full compliance with the requirements set forth in 37 C.F.R. § 1.83(a) and 37

C.F.R. § 1.121(d), and respectfully requests that the objection to the drawings under 37 C.F.R. § 1.83(a) be withdrawn.

Claim Rejection – 35 U.S.C. § 112

Claims 4 and 12 have been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. With the amendment of Figs. 3, 4, and 6 and with amendment of the specification to insert new paragraph [0024.1], Applicant respectfully submits that the subject matter of claims 4 and 12 discloses the best mode of positioning and connecting the opening of the handle to the cavity, and claims 4 and 12 are in full compliance with the requirements of 35 U.S.C. § 112. In view of the amendments of the drawings and specification, Applicant requests that the rejection of claims 4 and 12 under 35 U.S.C. § 112, first paragraph, be withdrawn.

Claim Rejection – 35 U.S.C. § 102 – Claims 1, 5, 9, and 13

The Examiner has rejected claims 1, 5, 9, and 13 under 35 U.S.C. § 102(e), or alternatively § 102(a), as being anticipated by U.S. Patent Application Publication No. 2002/0080678 (Daniels, Jr., hereinafter “Daniels”). The Examiner states that Daniels teaches a beverage mixer having a spherical handle, an elongate plunger, and a trough cavity extending from a first end to a second end. The rejections of claims 1, 5, 9, and 13 are respectfully traversed.

Referring to Figs. 2 and 5, Daniels discloses a beverage mixer 10 having a stir stick 62 provided with a handle 70 and a stir portion 74. The stir portion 74 preferably includes at least two fins 120 and 122 arranged transversely. A terminal end of the stir portion 74 is provided with a bumper 126. The bumper 126 is disclosed to surround the lower end of the stir portion 74 (see page 4, paragraph [0048]).

Claims 1 and 9, as amended, recite, *inter alia*,

... an elongate plunger having first and second ends, the plunger having a cavity extending between the first and second ends such that at least a portion of the plunger is generally trough-shaped, the cavity being open at least at the second end, forming an

opening extending in a direction parallel to a longitudinal axis of the plunger, the opening and cavity forming a continuous flow channel from the first end to the second end; ...

Claims 1 and 9 have each been amended to recite that the opening at the second end of the cavity extends in a direction parallel to a longitudinal axis of the plunger. Claims 1 and 9 have been further amended to recite that the cavity and opening form a continuous flow channel from a first end to a second end. Support for the amendments is found at least in the drawings, particularly Figs. 3 and 4, which show that the cavity 48, formed by the walls of plunger 42, forms an opening at second end 46 which extends in a direction parallel to a longitudinal axis of the plunger 42 and which connects the cavity 48 with the scoop 50. Figs. 3 and 4 further show that the opening and the cavity 48 form a continuous flow channel from the first end to the second end.

Daniels fails to disclose an opening extending in a direction parallel to a longitudinal axis of the plunger. On the contrary, the drawings of Daniels (see Figs. 2, 5, and 7) suggest that the channels formed between transverse members 120 and 122 terminate at a second end of the plunger 62 proximate bumper 126 with a closed end. As Daniels fails to disclose the opening recited in claims 1 and 9, Daniels also fails to disclose a continuous flow channel formed by the opening and a cavity.

As Daniels fails to disclose each and every element of claims 1 and 9, Applicant respectfully submits that claims 1 and 9, along with claim 5 depending from claim 1 and claim 13 depending from claim 9, are not anticipated by Daniels, and requests that the rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

Claim Rejection – 35 U.S.C. § 102 – Claims 1-4 and 6-8

The Examiner has rejected claims 1-4 and 6-8 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,636,390 (Strech). The Examiner states that Strech discloses an elongate plunger having a cavity and a handle and including a scoop end. The Examiner further states that the handle includes a disc collar and an opening in the handle. The rejections of claims 1-4 and 6-8 are respectfully traversed.

Referring to Figs. 1 and 3, Strech discloses a combination sink stopper and garbage scoop having an upper end and a lower end. A cylindrical side wall 23 proximate the lower end forms a scooping means 20. The side wall 23 forms a passageway between the upper and lower ends. A finger gripping means 30 is provided proximate the upper end. Strech further discloses a sealing means 15 having, in one embodiment, an S shaped angular wall 15C.

Claim 1, as amended, recites, *inter alia*,

A stirring stick for manipulating foodstuff **in combination with a blender**, the combination comprising:

a **blender base** containing a motor;

a **blender jar** releasably attached to the base, the blender jar being open at a top end and closed at a bottom end;

a **blade set** drivingly connected to the motor, the blade set extending into the blender jar proximate the bottom end;... . (emphasis added)

Claim 1 has been amended to clarify that the subject matter claimed is a stirring stick in combination with a blender, the blender including a blender base containing a motor, a blender jar, and a blade set. Support for the amendment is found in the original claims (claim 9), original drawings (Figs. 1 and 2) and in the specification at page 3, line 16 to page 4, line 25.

Strech fails to disclose a stirring stick in combination with a blender having a blender base, blender jar, and blade set. As Strech fails to disclose each and every element of claim 1 as amended, Applicant respectfully submits that claim 1, along with claims 2-4 and 6-8 depending from claim 1, are not anticipated by Strech, and requests that the rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

Claim Rejection – 35 U.S.C. § 102 – Claims 1-3, 9-11, and 14

The Examiner has rejected claims 1-4 and 6-8 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,250,771 (Berler). The Examiner states that Berler discloses an elongate plunger having a first end 22 and a second end, a cavity trough formed between sides 32, 34 to form a scoop, and a handle 26. The Examiner further states that Berler discloses a

blender base with a blender processor jar of the type having a blade (extending) from the bottom of the jar. The rejections of claims 1-3, 9-11, and 14 are respectfully traversed.

Referring to Figures 1, 4, and 5, Berler discloses a food holder 18 adapted for use with a food processor 10. The food holder 18 comprises an elongated body portion 20, bent into an angle, forming sides 32 and 34. The food processor 10 includes a feed tube 16 disposed above a rotating element 12, for example a slicing disc. In use, an elongated vegetable, such as a carrot or cucumber, is impaled on the elongated body portion 20. The vegetable is fed through the feed tube 16 into the rotating element 12 to slice or otherwise process the vegetable. The sliced vegetable is held in a container having a handle. The rotating element is positioned proximate an upper end of the container.

Claims 1 and 9, as amended, each recite, *inter alia*,

a blade set drivingly connected to the motor, the blade set extending into the blender jar **proximate the bottom end**;

an elongate plunger having first and second ends, the plunger having a cavity extending between the first and second ends such that at least a portion of the plunger is generally trough-shaped, the cavity being open at least at the second end, forming an opening extending in a direction parallel to a longitudinal axis of the plunger, **the opening and cavity forming a continuous flow channel from the first end to the second end**; ... (emphasis added)

Claims 1 and 9 have been amended to clarify that the blade set extends into the blender jar proximate the bottom end of the blender jar. Support for the amendments is found at least in the original drawings (Figs. 1 and 2).

Berler fails to disclose a blade set positioned proximate a bottom end of a blender jar. The rotating element of Berler is positioned proximate an upper end of the container. Berler also fails to disclose an opening and a cavity forming a continuous flow channel from a first end to a second end. On the contrary, Berler discloses a plurality of prongs 22 at an end of the food holder 18 distal the handle 26. The plurality of prongs 22 form a discontinuity in the longitudinal central portion formed by sides 32 and 34. As Berler fails to disclose each and

every element of claims 1 and 9 as amended, Applicant respectfully submits that claims 1 and 9, along with claims 2 and 3 depending from claim 1, as well as claims 10, 11, and 14 depending from claim 9, are not anticipated by Berler, and requests that the rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

Claim Rejection – 35 U.S.C. § 103 – Claims 7, 8, 15, and 16

The Examiner has rejected claims 7, 8, 15, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Berler. The Examiner asserts that Berler discloses all of the recited subject matter, except for a collar in the form of a disc. The Examiner states that Berler discloses a collar shaped in a cylindrical shape 56, and asserts that it would have been obvious to one of ordinary skill in the art to make the collar in the form of a disc. The Applicant respectfully traverses these rejections.

As discussed above, Berler fails to disclose at least the features of a blade set positioned proximate a bottom end of a blender jar, and of an opening and a cavity forming a continuous flow channel from a first end to a second end of a plunger as recited in independent claims 1 and 9. As Berler fails to teach, disclose, or suggest all of the features of claim 1 (and claims 7 and 8 depending from claim 1) or claim 9 (and claims 15 and 16 depending from claim 9), it is therefore respectfully submitted that even if Berler were modified to have a collar in the form of a disc, it would still not include all of the features of claims 7, 8, 15, and 16. Accordingly, it is requested that the rejection of these claims under 35 U.S.C. § 103(a) be withdrawn.

Claim Rejection – 35 U.S.C. § 103 – Claims 5 and 13

The Examiner has rejected claims 5 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Berler in view of Daniels. The Examiner asserts that Berler discloses all of the recited subject matter, except for a handle being generally semi-spherical in shape. The Examiner states that Daniels discloses a beverage plunger stick 62 having a spherical-like end 70, and asserts that it would have been obvious to one of ordinary skill in the art to modify the shape of the handle 26 of Berler to the spherical shape of Daniels. Applicant respectfully traverses these rejections.

As discussed above, Berler and Daniels fail to disclose, either individually or in the proposed combination, at least the feature of a plunger having an opening and a cavity forming a continuous flow channel from a first end to a second end as recited in independent claims 1 and 9. As the proposed combination of Berler and Daniels fails to teach, disclose, or suggest all of the features of claims 1 and 9, and therefore also of claims 5 and 13 depending from claims 1 and 9, respectively, it is respectfully submitted that a *prima facie* case for obviousness has not been established with respect to these claims. Accordingly, it is requested that the rejection of claims 5 and 13 under 35 U.S.C. § 103(a) be withdrawn.

Claim Rejection – 35 U.S.C. § 103 – Claims 12 and 13

The Examiner has rejected claims 12 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Berler in view of Strech. The Examiner asserts that Berler discloses all of the recited subject matter, except for a handle having an opening in fluid communication with a cavity, and having a plunger collar which is frustroconical in shape. The Examiner asserts that it would have been obvious to one of ordinary skill in the art to modify the shape of the handle 26 of Berler to a handle and collar having the frustroconical shape of Strech and to provide an opening through the handle of Berler connected to the trough cavity so that the handle might be gripped in a more ergonomic manner. Applicant notes that the feature of a frustroconical collar is recited in claim 16, rather than claim 13. It would appear, therefore, that the rejection of claims 12 and 13 over Berler in view of Strech was likely intended to be a rejection of claims 12 and 16. In either case, Applicant respectfully traverses the rejections of claims 12 and 13 (and 16) based upon Berler in view of Strech.

It is well settled that when making a rejection under 35 U.S.C. § 103, the Examiner has the burden of establishing a *prima facie* case of obviousness. MPEP § 2142. The Examiner can satisfy this burden only by showing an objective teaching in the prior art, or that knowledge generally available to one of ordinary skill in the art would lead the individual to modify or combine the relevant teachings of the references in the manner suggested by the Examiner. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed Cir. 1988). MPEP § 2143.01.

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching, suggestion or incentive supporting the combination. *In re Geiger*, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

The prior art reference does not make an invention obvious, unless something in the prior art reference would suggest the advantages to be derived from modifying the reference. *In re Sernaker*, 217 USPQ 1, 5-6 (Fed. Cir. 1983). MPEP § 2144.

There is no specific objective teaching identified by the Examiner in Berler or Strech, nor is there knowledge generally available to one of ordinary skill in the art, that would lead the artisan to combine the sink stopper of Strech with the food processor food holder of Berler. The sink stopper of Strech and the food holder of Berler belong to widely divergent fields of invention. That is, the sink stopper of Strech is non-analogous art. Therefore, the artisan would not be motivated to look to sink stoppers to modify a food holder.

Furthermore, with particular reference to claim 12, clearly there would be no motivation to incorporate an opening proximate a handle as disclosed in Strech into the handle of Berler. The functionality of the food holder of Berler would in no way be enhanced by providing an opening through the handle of Berler, the opening connecting to the longitudinal central portion defined by sides 32 and 34. Given that such an opening would be irrelevant to the functionality of the food holder of Berler, the artisan would in fact recognize that the proposed combination would be undesirable as an unnecessary design complication and manufacturing expense. Accordingly, absent some other motivation to combine the references, Berler and Strech are not properly combinable under 35 U.S.C. § 103(a) to render claim 12 obvious.

With particular reference to claim 16, similar to claim 12, here again clearly there would be no motivation to incorporate a sealing means having an S shaped angular wall, as disclosed by Strech, into the food holder of Berler. The functionality of the food holder of Berler would in no way be enhanced by providing a generally frustoconical collar to the handle of Berler. Given that such an opening would be irrelevant to the functionality of the food holder of Berler, the artisan would, as with the modification proposed relative to claim 12, recognize that the proposed combination would be undesirable as an unnecessary design complication and

manufacturing expense. Accordingly, absent some other motivation to combine the references, Berler and Strech are not properly combinable under 35 U.S.C. § 103(a) to render claim 16 obvious.

Assumingly *arguendo* that Berler and Strech are combinable, the proposed combination fails to disclose at least the limitation of claim 9 as amended of “a blade set drivingly connected to the motor, the blade set extending into the blender jar proximate the bottom end”. Thus, even if combined, the proposed combination would fail to teach, disclose, or suggest all of the elements of claim 9, and claims 12, 13, and 16 depending therefrom. Additionally, with particular reference to claim 13, Berler and Strech, both individually and in the proposed combination, fail to disclose the element recited in claim 13 of “a top portion of the handle is generally semi-spherical in shape.”

In summary, Strech is not properly combinable with Berler, as discussed above. The combination proposed by the Examiner is not taught or suggested by the prior art. Even if combined, the proposed combinations would fail to teach, disclose, or suggest all of the elements of claim 9 (and claims 12, 13, and 16 depending therefrom) of the Applicant's invention. It is therefore respectfully submitted that a *prima facie* case for obviousness has not been established with respect to claim 9 as amended and also with respect to claims 12, 13, and 16 depending from claim 9. Accordingly, it is requested that the rejection of claims 12 and 13 under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

In view of the foregoing amendment and remarks, Applicant respectfully submits that the present application, including claims 1-16, is in condition for allowance, and such action is respectfully requested.

Respectfully submitted,

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Amendments to the Drawings:

Applicant has amended Figs. 3, 4, and 6 to address an objection under 37 C.F.R. § 1.83(a) for failure to show every feature of the invention specified in the claims. The replacement sheets containing revised Figs. 3, 4, and 6 are attached at the end of this paper.